

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF NEW YORK

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MICHAEL LOWE,

Petitioner,

v.

9:20-CV-0595  
(GTS/ML)

WARDEN,

Respondent.

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APPEARANCES:

OF COUNSEL:

MICHAEL LOWE, 95656-020

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THOMAS SPINA, JR., ESQ.  
Assistant U.S. Attorney

GLENN T. SUDDABY, United States District Judge

**DECISION and ORDER**

Michael Lowe (“Petitioner”) filed his petition for a writ of *habeas corpus* pursuant to 28 U.S.C. § 2241 on June 1, 2020. (Dkt. No. 1.) By Report-Recommendation dated April 27, 2023, United States Magistrate Judge Miroslav Lovric recommended that the Petition be denied and dismissed, and that a certificate of appealability not be issued. (Dkt. No. 23.) Petitioner has not filed an Objection to the Report-Recommendation, and the time in which to do so has expired. (See generally Docket Sheet.)

After carefully reviewing the relevant papers herein, including Magistrate Judge Lovric's thorough Report-Recommendation, the Court can find no clear-error in the Report-Recommendation:<sup>1</sup> Magistrate Judge Lovric employed the proper standards, accurately recited the facts, and reasonably applied the law to those facts. As a result, the Report-Recommendation is accepted and adopted in its entirety for the reasons set forth therein.

To those reasons, the Court adds only one point. Within the deadline for the filing of an Objection to the Report-Recommendation, Plaintiff filed a Notice of Appeal. (Dkt. No. 24.) That Notice of Appeal (which did not specifically challenge any portion of the Report-Recommendation, and which was interlocutory in nature) neither constitutes an Objection to the Report-Recommendation nor deprives the Court of jurisdiction to act on the Report-Recommendation.<sup>2</sup>

**ACCORDINGLY**, it is

**ORDERED** that Magistrate Judge Lovric's Report-Recommendation (Dkt. No. 23) is

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<sup>1</sup> When no objection is made to a report-recommendation, the Court subjects that report-recommendation to only a clear error review. Fed. R. Civ. P. 72(b), Advisory Committee Notes: 1983 Addition. When performing such a "clear error" review, "the court need only satisfy itself that there is no clear error on the face of the record in order to accept the recommendation." *Id.*; see also *Batista v. Walker*, 94-CV-2826, 1995 WL 453299, at \*1 (S.D.N.Y. July 31, 1995) (Sotomayor, J.) ("I am permitted to adopt those sections of [a magistrate judge's] report to which no specific objection is made, so long as those sections are not facially erroneous.") (internal quotation marks omitted).

<sup>2</sup> See *U.S. v. Rodgers*, 101 F.3d 247, 252 (2d Cir. 1996) (deeming notice of appeal taken from non-final order as "premature" and a "nullity," and holding that the notice of appeal did not divest the district court of jurisdiction); *Burger King Crop. v. Horn & Hardart Co.*, 893 F.2d 525, 527 (2d Cir. 1990) (holding that notice of appeal taken from non-final judgment was "premature, and did not divest the district court of jurisdiction to amend the judgment"); *Leonhard v. U.S.*, 633 F.2d 599, 610 (2d Cir. 1980) ("[W]e see no efficiency to be gained by allowing a party arbitrarily to halt the district court proceedings by filing a plainly unauthorized notice which confers on this Court the power to do nothing but dismiss the appeal").

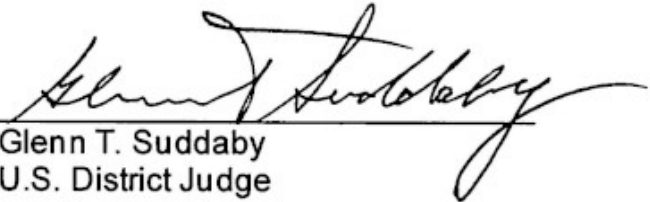
**ACCEPTED** and **ADOPTED** in its entirety; and it is further

**ORDERED** that Petitioner's Petition for a writ of *habeas corpus* (Dkt. No. 1) is

**DENIED** and **DISMISSED**.

**The Court declines to issue a certificate of appealability.**

Dated: June 1, 2023  
Syracuse, New York



Glenn T. Suddaby  
U.S. District Judge